(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(Chhattisgarh)

APPEAL UNDER SEC. 374(2) CR.P.C.

Criminal Appeal No. 115 /2001.

APPELLANT (In custody) — Rukmani Bai wife of Sonaram Marar aged 29 years resident of Laxmipur Police Station Pithoura Distt.Mahasamund (Chhattisgarh)

VERSUS

RESPONDENT — State of Chhattisgarh Through: Police Station Pithoura Distt.Mahasamund.

(488)

Filed on 25/1/2001 S.K. Mishra Advocate

R. to AR

CRIMINAL APPEAL UNDER SEC. 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

XI-HC-22

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... Criminal Appeal No. 115/2001 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri Justice L.C. Bhadoo, J &
Hon'ble Shri Justice V.K. Shrivastava, J.

15/09/2006

Shri Suryakant Mishra, counsel for the appellant.

Shri Arun Sao, Additional Public Prosecutor with Shri D.K. Gwalre, Dy. Govt. Advocate for the respondent/State.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 13/12/2000 passed by 2nd Additional Sessions Judge, Mahasamund, in Sessions Trial No. 142/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 27/02/2000 in the afternoon at about 4.00 p.m. Duryodhan aged 4 years s/o. Chitranjan was playing. When Chitranjan returned from Pithoura market, he enquired about Duryodhan from his wife Jasobai on which she replied that he has gone for playing, but not returned, on this reply Chitranjan started searching for his son Duryodhan, but

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

whereabouts of Duryodhan could not be traced out. When in search of his son Duryodhan, he went near the kitchen garden of one Amrood Marar, he saw that Duryodhan was lying flat and there was a ligature mark on his neck and abrasions on his chest. Seeing the body of his son Duryodhan, he started weaping on which Pitamber and others came on scene, they saw that Duryodhan has been murdered. Chitranjan gave merg intimation (Ex.P/2) in the Police Station: Pithoura on which Station House officer registered the first information report (Ex.P/3) for commission of offence under Section 302 of the IPC.

SHO Police Station Pithoura took up the investigation. He after giving notice (Ex.P/4) to Panchas prepared Panchanama (Ex.P/5) of the body of Duryodhan. The body of Duryodhani was sent for postmortem examination vide Ex.P/6-A to Primary Health Centre, Pithoura, where Dr. Smt. Tara Agrawal (PW/4) conducted postmortem on the body of Duryodhan and prepared the postmortem report (Ex.P/6). She noticed abraded ligature mark present around the neck, below chin in the size of 16 c.m. x 1 cm x $\frac{1}{4}$ cm., abrasion on the right cheek in the size of 4 cm x 1 $\frac{1}{2}$ cm., abrasion in the size of 1 cm near the right eye, abrasion on the chest of right side in the size

(पीछे देखिये)

(37)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of 2 cm x ½ cm., a linear abrasion in the size of 1 cm on the face. She opined that cause of death was asphyxia due to strangulation.

During investigation accused/appellant-Rukmanibai gave memorandum (Ex.P/9) and in pursuance of that rope and sickle were recovered at her instance from her house under Ex.P/.10, P/11 & P/12. The rope was sent to Dr. Tara Agrawal (PW/4) for her opinion vide Ex.P/7-A and Doctor gave her opinion vide Ex.P/7 that the abraded ligature mark found on the neck of Duryodhan could be caused by rope in question. The Investigating Officer prepared the site plan (Ex.P/9) of the house of Rukmanibai. The rope and sickle were sent for examination to Forensic Science Laboratory, Raipur, under Ex.P/15 from where report (Ex.P/16) of Forensic Science Laboratory, Raipur was received in which it was opined that the rope in question has been cut by the sickle sent for examination to FSL. No blood was found on the rope.

After completition of investigation, charge-sheet was filed in the Court of Chief Judicial Magistrate, Mahasamund, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge received the case on transfer for trial.

(पीछे देखिये)

(38)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish charge against the accused examined fifteen witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C., in which she denied the material appearing against her in the prosecution evidence and stated that she is innocent and she has been falsely implicated in the crime.

Learned Additional Sessions Judge, after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard Shri Surkyakant Mishra, counsel for the accused/ appellant and Shri Arun Sao Additional Public Prosecutor with Shri D.K. Gwalre, Dy. Govt. Advocate for the State.

The fact of homicidal death of Duryodhan has not been disputed by learned counsel for the appellant. Apart from that, from the evidence of PW/4, Dr. (Smt.) Tara Agrawal, who conducted postmortem on the body of Duryodhan, it is clear that the death of Duryodhan was homicidal in nature, as she noticed ligature mark around the neck of the deceased as mentioned earlier and she has stated that the said ligature mark is possible by use of rope in question. The doctor has stated that the death of Duryodhan was

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

homicidal in nature. Therefore, it is established that the death of Duryodhan was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, there is no direct or ocular evidence in this case. The whole case rests on the circumstantial evidence and as per the settled law in order to convict an accused based on the circumstantial evidence, Hon'ble the Apex Court in the matter of ***Dhananjoy Chatterjee Vs. State of West Bengal, reported in (1994) 2 SCC 220*** held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In the present case, prosecution has tried to establish the crime against the accused on the basis of following circumstances:-

(i) That the rope and sickle were recovered at the instance of the accused from her house.

(ii) That accused Rukmani Bai was seen by PW/14 Lomabai, going and coming back towards the site where the body of Duryodhan was found.

(iii) That there was animosity between the accused family and the deceased family.

As far as first circumstance is concerned, accused/appellant said to have given memorandum (Ex.P/9) to the Investigating Officer regarding rope & sickle and in pursuance of that, the said rope & sickle were recovered at the instance of the accused from her house under Exs.P/10, P/11 & P/12. The witnesses namely Tularam (PW/8) & Ghundu (PW/9) have categorically stated that the rope & sickle were

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recovered at the instance of the accused from her house. Investigating Officer Prithvi Dubey (PW/5) has stated that the accused/appellant while in Police custody gave memorandum (Ex.P/9) and in pursuance of that, the rope & sickle were recovered at the instance of the accused from her house vide Exs.P/10, P/11 & P/12. Therefore, recovery of rope & sickle from the house of the accused is established. The question remains whether the prosecution has been able to establish that the said rope was used for strangulation of Duryodhan by the accused. In this connection Dr. (Smt.) Tara Agrawal (PW/4) who conducted postmortem on the body of Duryodhan, has stated that it was possible to strangulate Duryodhan with the help of this rope, but there is no other circumstantial evidence that the rope in question was the article which was used for the purpose of strangulation of Duryodhan, as no blood or anything was found on the rope or any piece of the rope, which was recovered at the instance of the accused, was found at the place of occurrence. So, merely on the basis of recovery of the rope & sickle, it is not possible to connect the accused/appellant with the crime in question.

As far as 2nd circumstance is concerned, Lomabai (PW/14) has stated that she saw the accused on the fateful day going towards the place of occurrence by scaling the wall near the kitchen garden of

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kansram. She has stated in cross examination in para 5 that she saw the accused going and coming back from the kitchen garden of Amrood Marar, but she was empty hands. This witness on her own stated that when there was a straight way to go to her house, then why she scaled down the wall. But, the fact remains that as per the prosecution case, the rope and sickle were recovered from the house of the accused and this witness had not seen the accused carrying the rope & sickle in her hands. As per the case of the prosecution, the murder was committed by the accused in her house and thereafter, she threw the body of Duryodhan near the kitchen garden of Amrood Marar, but this witness had not seen accused carrying the body of Duryodhan from her house to the kitchen garden of Amrood Marar. Therefore, from this evidence, it is difficult to reach to a definite conclusion that the accused was seen by this witness carrying the body of Duryodhan, rope and sickle in her hands, and merely on the evidence of this witness, it is difficult to connect the accused/appellant with the crime in question. Suspicion however, strong that cannot take place of proof. Moreover, her evidence has to be scrutinised with greater care and circumspection for the reason that she is closely related to the mother of the deceased as the mother of the deceased was the daughter of the sister of this

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -९-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witness from close scrutnity of the evidence of this witness, we are of the considered opinion that the evidence of this witness is very weak and on merely on this evidence, it is very difficult to connect the accused/ appellant with the crime in question unless the evidence of this witness is corroborated by other circumstantial evidence connecting the accused with the crime in question.

As far as third circumstance is concerned, there is no cogent and clear evidence that there was a strong animosity between the accused and the parents of deceased Duryodhan so as to force the accused to commit such heinous crime. In the merg intimation given by the father of the deceased namely Chitranjan, there is nothing to show that there was any animosity between the accused family and the deceased family. In the first information report, it has been mentioned that Sonaram was not on good terms with them and there is animosity between them, and one Paramanand saw Rukmani Bai near the kitchen garden of Amrood Marar, but the said Paramanand has not been examined. The back ground of animosity between the accused family and deceased family has not been disclosed in the first information report. However, the father of the deceased namely Chitranjan (PW/2) who gave merg intimation and lodged first information report, in para seven of his evidence has stated that he

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - १०-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was doubting the involvement of Sonaram in committing the murder of his son Duryodhan. 6 - 7 days before the incident there was some quarrel between Rukmani, Tolmati and victim family on account of theft of one axe and hen, but this fact was not mentioned in the merg intimation or in the first information report. He has further stated that Rukmani Bai and Tolmati abused them. PW/13, mother of the deceased namely Jasobai in para 5 of her evidence has stated that the accused persons were not abusing them in their names, but they used to abuse. At about 12.00 noon in the day of incident, they abused them, but this fact has not been corroborated by Chitranjan, husband of this witness. Therefore, it is a very weak type of evidence and it is difficult to connect the accused/appellant with the crime in question based on such a weak type of evidence.

For the foregoing reasons, we are of the considered opinion that even taking together based on these three circumstances, the prosecution has not been able to establish that accused/appellant was the author of crime in question and there is no possibility of committing this crime by anybody else in other words the three circumstances have not stood up to the test for resting conviction on the circumstantial evidence. The prosecution has failed to establish

(पीछे देखिये)

45

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the crime against the accused/appellant with clear, cogent and circumstantial evidence. In the result, the appeal succeeds and the same is allowed. The conviction and sentence imposed upon the appellant under Section 302 of the IPC are set aside and she is acquitted of the said charge. She is in detention since 28/02/2000. Accordingly, the accused be set at liberty forthwith unless required to be detained in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd//-** **V.K.Shrivastava** **Judge**

Raju

(पीछे देखिये)